

### **REMARKS**

The outstanding issues in the instant application are as follows:

- Claims 1-34 are rejected under 35 U.S.C. § 102(b).

Applicant hereby traverses the outstanding objections and rejections, and requests reconsideration and withdrawal in light of the remarks contained herein. Claims 1-34 are pending in this application.

#### **I. REJECTIONS UNDER 35 U.S.C. § 102 (b)**

Claims 1-34 are rejected under 35 U.S.C. § 102(b) as being unpatentable over U. S. Patent No. 6,757,543 to Moran (hereinafter *Moran*). The Examiner notes in paragraph 2 of the Office Action that claims 1-34 are rejected under 35 U.S.C. § 103(a), which is inconsistent with the Examiner's heading and statement in paragraph 1 directed to the rejection being pursuant to 35 U.S.C. § 102(b). For purposes of this Response, Applicants assume that the Examiner intended to assert his rejections under § 102(b) and will direct their arguments to traversing such § 102(b) rejection.

It is well settled that to anticipate a claim, the reference must teach every element of the claim. *See* M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim." *See* M.P.E.P. § 2131, (*citing In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990)). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *See* M.P.E.P. § 2131, (*citing Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989)). Applicants respectfully assert that the rejection does not satisfy these requirements.

#### **A. Claims 1-12**

Claim 1 requires:

a plurality of intermediate monitor sites communicatably connected to said central processing server for relaying said measurement requests; and

a plurality of smart probes in communication with said plurality of intermediate monitor sites for measuring said data in response to said measurement request, wherein each one of said plurality of smart probes determines a set of conditions for said each one prior to said measuring.

In his rejection of claim 1, the Examiner cites to *Moran's* Abstract, Summary of the Invention, Column 13, line 59 to Column 14, line 8, and Column 15, lines 15-29, as teaching the plurality of intermediate monitor sites required in claim 1. However, none of the cited selections from *Moran* teach or even suggest a plurality of intermediate monitor sites. For example, *Moran's* Abstract states simply that, "Data messages are sent from a plurality of remote and/or local monitoring probes to other monitoring probes." *Moran*, Abstract. The Abstract further states, "Various performance data are then measured, including message deliver latency and network accessibility. This data is then sent from the remote monitoring probes to one or more central monitoring stations ...." *Moran*, Abstract. *Moran* simply does not mention anything that could be interpreted as a plurality of intermediate monitoring sites, as required in claim 1.

The Examiner further cites to *Moran*, Column 6, lines 48-64, as teaching that each of the plurality of smart probes determines a set of conditions for itself prior to any measuring. However, this selection from *Moran* discusses the *Moran* monitoring probes recording timestamps when the messages are received and possibly when the message was sent. Col. 6, lns 48-52. *Moran* continues to teach that computers within the probes can communicate the message-sent times to the receiving probe computers. Col. 6, lns 55-61. This disclosure from *Moran* does not teach or even suggest that the smart probes determine a set of conditions for themselves prior to making any measurements, as required by claim 1. Therefore, *Moran* does not teach or even suggest each and every limitation of claim 1. As such, claim 1 is patentable over the rejection of record, and Applicants respectfully request the Examiner to withdraw said rejection.

Claims 2-12 each depend directly or indirectly from independent claim 1 and, thus, inherit each of the limitations of claim 1. As such, claims 2-12 are each patentable over *Moran*. Applicants, thus, assert that claims 1-12 are patentable over the § 102(b) rejections of record and respectfully requests the Examiner to withdraw same.

**B. Claims 13-23**

Claim 13 requires, “issuing an experiment from a central server to a plurality of intermediate monitoring stations” and “determining at said plurality of smart probes a set of tasks for completing said experiment.” In support of his rejection, the Examiner cites to Figure 13 from *Moran*, as well as Column 15, lines 45-67, as teaching issuing an experiment from a central server to an intermediate monitoring station. However, Figure 13 is a flowchart corresponding to a set of diagnostic tests that may be performed to assist users in identifying the sources of network access problems. Col. 2, lns 65-67. Figure 13 does not identify whether an experiment is issued from a central server to a plurality of intermediate monitoring stations, which are then transmitted to the probes before the probes perform the diagnostic tests. Figure 13 is merely a bald flowchart that does not provide the limitations of claim 13. Moreover, the selection cited by the Examiner from Column 15 also does not describe whether an experiment is issued from a central server to a plurality of intermediate monitoring stations. It describes the flowchart of Figure 13, which, as noted above, does not teach the limitations of claim 13.

The Examiner continues to support his rejection of claim 13 by citing to Column 16 of *Moran* as teaching the smart probes determining a set of tasks for completing the experiment. However, the cited selection merely describes the various diagnostic tests that can be performed in response to certain network conditions. The cited selection does not even teach that the tests are performed by the *Moran* probes. Therefore, *Moran* does not teach or even suggest each and every limitation of claim 13. As such, claim 13 is patentable over the rejection of record, and Applicants respectfully request the Examiner to withdraw said rejection.

Claims 14-23 each depend directly or indirectly from independent claim 13 and, thus, inherit each of the limitations of claim 13. As such, claims 14-23 are each patentable over *Moran*. Applicants, thus, assert that claims 13-23 are patentable over the § 102(b) rejections of record and respectfully requests the Examiner to withdraw same.

**C. Claims 24-34**

Claim 24 requires, “means for transmitting an experiment from a central system to a plurality of intermediate stations” and “means for determining at said plurality of smart probes a set of actions for completing said experiment.” In support of his rejection, the Examiner cites to Figure 13 from *Moran*, as well as Column 15, lines 45-67, as teaching issuing an experiment from a central server to an intermediate monitoring station. However, as noted above, Figure 13 does not identify a means for transmitting an experiment from a central system to a plurality of intermediate stations, which are then communicated to the probes before the probes perform the diagnostic tests. Furthermore, the selection cited by the Examiner from Column 15 also does not describe whether an experiment is issued from a central system to a plurality of intermediate stations. It describes the flowchart of Figure 13, which, as noted above, does not teach the limitations of claim 24.

The Examiner also cites to Column 16 of *Moran* as teaching the smart probes determining a set of actions for completing the experiment. However, this cited selection merely describes the various diagnostic tests that can be performed in response to certain network conditions. The cited selection does not even teach that the diagnostics are performed by the *Moran* probes. Therefore, *Moran* does not teach or even suggest each and every limitation of claim 24. As such, claim 24 is patentable over the rejection of record, and Applicants respectfully request the Examiner to withdraw said rejection.

Claims 25-34 each depend directly or indirectly from independent claim 24 and, thus, inherit each of the limitations of claim 24. As such, claims 25-34 are each patentable over *Moran*. Applicants, thus, assert that claims 24-34 are patentable over the § 102(b) rejections of record and respectfully requests the Examiner to withdraw same.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-1078, under Order No. 10030565-1 from which the undersigned is authorized to draw.

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Date of Deposit: December 14, 2005

Typed Name: Susan Bloomfield

Signature: Susan Bloomfield

Respectfully submitted,

By TJ. Meaney  
Thomas J. Meaney  
Attorney/Agent for Applicant(s)  
Reg. No.: 41,990

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Telephone No. (214) 855-8230